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Attorney for Defendant  
 Pasquale Iannetti

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 09-0850 VRW
	)	
Plaintiff,	)	<b>DEFENDANT IANNETTI'S NOTICE OF</b>
	)	<b>MOTION AND MOTION TO SUPPRESS</b>
v.	)	<b>STATEMENTS AND MEMORANDUM OF</b>
	)	<b>POINTS AND AUTHORITIES IN</b>
PASQUALE IANNETTI,	)	<b>SUPPORT THEREOF</b>
	)	
Defendant.	)	Date: May 13, 2010
	)	Time: 2:00 p.m.
	)	Judge: Hon. Vaughn R. Walker

TO: JOSEPH P. RUSSONIELLO, United States Attorney  
 SUSAN BADGER, Assistant United States Attorney

PLEASE TAKE NOTICE that defendant Pasquale Iannetti moves this Court for an order suppressing as evidence all purported statements obtained during his interrogation by United States Postal Inspectors on February 20, 2008.

This motion is made on the ground that the statements were taken in violation of Mr. Iannetti's constitutional right to remain silent, and to due process under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Fed. R. Crim. P., Fed. R. Evid., and all other applicable statutes.

Dated: March 19, 2010

Respectfully submitted,

/s/  
 Alan A. Dressler  
 Attorney for Defendant  
 Pasquale Iannetti

**MEMORANDUM OF POINTS AND AUTHORITIES**

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**STATEMENT OF FACTS<sup>1</sup>**

Mr. Iannetti is charged with numerous counts of mail and wire fraud based on the alleged sale of counterfeit art prints. During the period covered by the indictment he was the owner of the Pasquale Iannetti Art Gallery located at 565 Sutter Street in San Francisco, California. Mr. Iannetti seeks the suppression of statements made to agents of the United States Postal Service on February 20, 2008. These statements were made during an interrogation which took place at Mr. Iannetti's gallery while postal inspectors were executing a search warrant for counterfeit art prints and business records. Mr. Iannetti was not given *Miranda* warnings either before or during the interrogation.(Exhibit E<sup>2</sup>)

In early November of 2007 Elio Bonfiglioli entered the United States with a number of art prints purportedly created and signed by the artist Joan Miro. He eventually made his way to San Francisco, California where he allegedly sold one or more of those prints, including one entitled "Quatre Colors Aparien El Mon" ("Quatre Colors"), to Mr. Iannetti. (Exhibit D<sup>3</sup> at ¶ 4.a.)

On December 24, 2007, postal inspector Marius Greenspan (Greenspan), acting in an undercover capacity, purchased a "Quatre Colors" print from Mr. Iannetti's gallery. On January 23, 2008, this print was examined by an art expert who opined that it was a counterfeit. (Exhibit D at ¶ 4.b.)

On February 20, 2008 at about 10:10 a.m., Greenspan, and at least seven other postal inspectors, entered Mr. Iannetti's gallery for the purpose of executing a search warrant which authorized the seizure of all Miro prints in the gallery and certain business records. (Exhibit D at

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<sup>1</sup> This Statement of Facts stems in part from portions of a Search Warrant and a Memorandum of Interview which purports to memorialize Mr. Iannetti's statements during an interrogation by postal agents. Mr. Iannetti does not adopt the statements set forth in those documents (Exhibits B and E) and reserves the right to contest those statements at hearing or trial.

<sup>2</sup> "Memorandum of Interview" prepared by Esteban.

<sup>3</sup> Declaration of Alan Dressler, submitted herewith.

¶ 4.c.) Mr. Iannetti was not present at this time. Approximately two hours after the postal inspectors began their search of the gallery Greenspan contacted Mr. Iannetti by telephone. Mr. Iannetti was at home when he received this call. Greenspan identified himself as a federal agent and told Iannetti that he was at his gallery and that Iannetti should come there as soon as he could. Greenspan also told him that the door to the gallery would be locked and that he would have to knock on the door to gain entry. He was also told to bring proof of identification with him. ( A<sup>4</sup> at ¶ 3.-4.)

When Mr. Iannetti arrived at the gallery the door was locked and the gallery was crowded with agents. After knocking on the door he was greeted by Greenspan and directed to follow him to the back of the gallery where they were joined by postal inspector Patrick Esteban (Esteban). Iannetti was then instructed to follow Esteban and Greenspan into a room known as the “viewing room.” (Exhibit A at ¶ 4.-6.) After Mr. Iannetti had taken a seat Greenspan told him they had a search warrant, that he was being investigated for mail and wire fraud, and that he wanted to ask him some questions. Mr. Iannetti was also told that the agents did not come to the gallery to arrest him or shut his business down. He was also told, in an unfriendly and authoritative tone of voice, that he could leave if he wanted to do so. Given the overall situation Mr. Iannetti did not feel that he was really free to leave and agreed to answer some questions. (Exhibit A at ¶ 8.)

Mr. Iannetti was first asked to review the warrant and attachments. When he did so he learned that it authorized the seizure of all Miro prints and lithographs located in the gallery, all business records relating to transactions between Iannetti and Bonfiglioli, and all business records relating to the sale of Miro prints between 2001 and February 20, 2008. The warrant described the items to be seized as “evidence” and “instrumentalities” of mail and wire fraud and specifically referred to the “Quatre Colors” series, one of which the Iannetti gallery sold to Greenspan in December of 2007. While Mr. Iannetti was reviewing the warrant Greenspan pointed to the reference to “Quatre Colors” and said “You remember this piece don’t you?”

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<sup>4</sup> Declaration of Pasquale Iannetti, submitted herewith.

1 (Exhibit A at ¶ 9.)

2 When Iannetti finished reviewing the warrant Greenspan immediately began asking him  
3 questions about his relationship with Bonfiglioli. The questioning quickly turned hostile and  
4 accusatory. Iannetti was accused of lying, told that the agents “knew everything”, and was  
5 presented with evidence of his guilt. Greenspan also compared his situation with that of Barry  
6 Bonds, told him that he was in serious trouble, and that things would be better for him if he  
7 cooperated. (Exhibit A at ¶ 10.-11.)

8 The ensuing interrogation lasted for more than three and one-half hours. During this time  
9 Iannetti was allowed to leave the room on two occasions. The first was when he requested to use  
10 the bathroom. Although this request was granted he was accompanied to and from the bathroom  
11 by a postal inspector who stood by the bathroom door while he was inside. (Exhibit A at ¶ 12.)

12 The second time Iannetti left the room occurred approximately two hours after the  
13 interrogation began. Sometime after 1:00 p.m. Mr. Iannetti’s wife, Elena Iannetti, received a  
14 telephone call from a gallery employee who told her that there were a lot of investigators at the  
15 gallery. After unsuccessfully trying to contact Mr. Iannetti by telephone, she became concerned  
16 and decided to go to the gallery. When she arrived at the gallery the door was locked and the  
17 gallery was full of people she did not recognize. After knocking on the door repeatedly it was  
18 opened by an agent. She identified herself as Mr. Iannetti’s wife and asked if her husband was in  
19 the gallery. The agent told her the gallery was closed and shut the door in her face. She became  
20 very upset and eventually let herself into the gallery with her husband’s key. Upon entering she  
21 was physically confronted by one of the agents. She became hysterical and shouted that she  
22 would not leave the gallery without her husband. Shortly thereafter Greenspan and Mr. Iannetti  
23 came out of the viewing room and Mr. Iannetti tried to calm her down. When she still refused to  
24 leave the agents agreed to let her remain, however, she was kept isolated from Mr. Iannetti until  
25 the interrogation was completed. (Exhibit A at ¶ 13, Exhibit B<sup>5</sup> at ¶ 6.-10.)

26 At the conclusion of his interrogation Mr. Iannetti was told that the agents would not be  
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28 <sup>5</sup> Declaration of Elena Iannetti, submitted herewith.

1 finished searching the gallery until some time later in the evening. The Iannetti's left the gallery  
 2 around 5:30/6:00 p.m. and returned around 6:30/7:00 p.m.. The postal agents completed their  
 3 search at 7:30 p.m., at which time Mr. and Mrs. Iannetti locked the door to the gallery and left.  
 4 (Exhibit D at ¶ 4.c.)

## 5 **ISSUE TO BE DECIDED**

6 Should Mr. Iannetti's statements to Esteban and Greenspan be suppressed as evidence in  
 7 this case?

## 8 **ARGUMENT**

### 9 **I. MR. IANNETTI WAS NOT GIVEN *MIRANDA* WARNINGS**

10 Mr. Iannetti was not given *Miranda* warnings before or during the interrogation  
 11 conducted by Greenspan and Esteban. (Exhibit E) In *Miranda v. Arizona*, 384 U.S. 436, 86  
 12 (1966), the Supreme Court held that "[T]he prosecution may not use statements, whether  
 13 exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it  
 14 demonstrates the use of procedural safeguards effective to secure the privilege against self-  
 15 incrimination."

### 16 **II. INTERROGATIONS CONDUCTED IN A POLICE DOMINATED 17 ATMOSPHERE ARE CUSTODIAL**

18 *Miranda* warnings are required "only where there has been such a restriction on a person's  
 19 freedom as to render him 'in custody.'" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). "To  
 20 determine whether an individual was in custody, a court must, after examining all of the  
 21 circumstances surrounding the interrogation, decide whether there [was] a formal arrest or  
 22 restraint on freedom of movement of the degree associated with a formal arrest." *United States v.*  
 23 *Kim*, 292 F.3d 969, 973 (9<sup>th</sup> Cir. 2002) "Two discrete inquiries are essential to the determination:  
 24 first, what were the circumstances surrounding the interrogation; and second, given those  
 25 circumstances, would a reasonable person have felt he or she was not at liberty to terminate the  
 26 interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (fn. omitted.)

27 The Ninth Circuit has identified a number of different factors to be used in determining  
 28

1 whether an individual was in custody at the time he or she was interrogated by government  
2 agents. In *United States v. Kim, supra*, the interrogation took place during the execution of a  
3 search warrant at the suspect's place of business. The court outlined a five factor test for  
4 determining whether Kim was in custody: (1) the language used to summon the individual; (2)  
5 the extent to which the defendant is confronted with evidence of guilt; (3) the physical  
6 surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure  
7 applied to detain the individual. Id. 292 F.3d at 974.

8 In *United States v. Craighead*, 593 F.3d 1073 (9<sup>th</sup> Cir. 2008), the interrogation took place  
9 during the execution of a search warrant at the defendant's home. The court outlined a four factor  
10 test for determining whether Craighead was in custody: (1) the number of law enforcement  
11 personnel and whether they were armed; (2) whether the suspect was at any point restrained,  
12 either by physical force or threats; (3) whether the suspect was isolated from others; and (4)  
13 whether the suspect was informed that he was free to leave or terminate the interview, and the  
14 context in which any such statements were made. Id. 593 F.3d at 1084.

15 In both *Kim* and *Craighead* the ultimate inquiry focused on the extent to which the  
16 circumstances of the interrogation turned the location of the interrogation into a "police  
17 dominated atmosphere" where the suspect would have reasonably felt compelled to stay and  
18 answer the agents questions. See *Kim*, 292 F.3d at 977; *Craighead*, 593 F.3d. at 1083.  
19 Application of the *Kim* and *Craighead* factors to the totality of the circumstances surrounding the  
20 interrogation of Mr. Iannetti leads to the inescapable conclusion that it was conducted in a  
21 "police dominated" atmosphere and that a reasonable person in Mr. Iannetti's situation would  
22 have felt that he had no choice but to stay and answer Greenspan's questions.

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25 ///

26 ///



### III. MR. IANNETTI WAS INTERROGATED IN A “POLICE DOMINATED ATMOSPHERE”

#### A. GREENSPAN COMMANDED IANNETTI TO COME TO THE GALLERY

The words used by Inspector Greenspan to summon Mr. Iannetti to the gallery mitigate in favor of a finding that he was in custody during his interrogation. Approximately two hours after the agents began executing the search warrant<sup>6</sup> Greenspan called Mr. Iannetti at home and asked him “do you know me?”. When Mr. Iannetti said he did not recognize his voice Greenspan identified himself as a federal postal inspector. He then told him that he was at the gallery and that Iannetti should “ ‘ . . . come here as soon as you can’ or words to that effect.” Greenspan also told Mr. Iannetti that the door to the gallery would be locked, that he would have to knock on the door to gain entry, and that he should bring some form of identification with him. (Exhibit A at ¶2.- 3.)

Mr. Iannetti arrived at the gallery at approximately 1:00 p.m. He knocked on the door as instructed and was met by Greenspan who asked him do you “remember . . . [me ] . . . now?”. After indicating he remembered Greenspan as the person who bought a Miro print in December for his boyfriend in Chicago he was directed to follow Greenspan into the gallery. He then followed Greenspan through a crowd of agents, some of whom appeared to be armed, who were searching the gallery. (Exhibit A at ¶ 5.) When they arrived at the rear of the gallery they were met by Esteban. Iannetti was then ushered into the “viewing room” and the door was closed. Mr. Iannetti sat down on a chair and Greenspan sat on a couch to his left. Esteban stood and then eventually sat between Iannetti and the door, which was the only exit from the room. (Exhibit A at ¶ 4.- 7.)

Language similar to that used by Greenspan to summon Mr. Iannetti to the gallery has been found sufficient to make a reasonable person feel that he was not at liberty to leave. In *United States v. Brobst*, 558 F.3d 982, 995 (9<sup>th</sup> Cir. 2009), the defendant arrived at his home while police were executing a search warrant. He was met outside the house by a police officer

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<sup>6</sup> The postal agents entered and took control of the gallery at 10:10 a.m. (Exhibit D at ¶ 4.c.)

1 who told him “‘you need to come with me’ or words to that effect” and directed him into the  
 2 residence. The court held that this language weighed in favor of a conclusion that Brobst was in  
 3 custody. *Id.* at 995.

4 In the instant case Mr. Iannetti was summarily ordered to leave his home and travel to his  
 5 gallery. He was also told to bring his identification with him. This request, when coupled with  
 6 the unfriendly command to appear at the gallery, would certainly have led a reasonable person to  
 7 believe that he had no choice but to obey Greenspan’s command. Under the foregoing  
 8 circumstances it cannot be said that Mr. Iannetti “voluntarily” agreed to come to the gallery or  
 9 that his encounter with the postal agents was “consensual”. This factors weighs heavily in favor  
 10 of a finding that Mr. Iannetti was in custody during his interrogation.

#### 11 **B. THE INTERROGATION WAS LENGTHY**

12 According to Esteban’s Memorandum of Interview Mr. Iannetti was interrogated for three  
 13 hours and forty minutes. (Exhibit E at p. 1) In *Kim, supra*, the court found that a 90 minute  
 14 interrogation at the defendant’s place of business was “a full-fledged interrogation, not a brief  
 15 inquiry” *Id.* 292 F.3d at 977 In *Craighead* a 30 minute interrogation was found to be custodial.  
 16 *Id.* 593 F.3d at 1078. In *United States v. Wauneka*, 770 F.2d 1434, 1439 (9<sup>th</sup> Cir. 1985) an  
 17 interrogation that lasted over an hour was likewise found to be custodial.

18 A three hour and forty minute interrogation is certainly at the high end<sup>7</sup> of Ninth Circuit  
 19 precedent regarding this factor and weighs heavily in favor of a finding that Mr. Iannetti was in  
 20 custody.

#### 21 **C. MR. IANNETTI WAS SUBJECTED TO ACCUSATORY QUESTIONING** 22 **AND CONFRONTED WITH EVIDENCE OF GUILT**

23 Mr. Iannetti was confronted with evidence of his guilt both before and immediately after  
 24 the interrogation began. Shortly after entering the viewing room Mr. Iannetti was told he was  
 25 under investigation for mail and wire fraud. He asked to review the search warrant and  
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27 <sup>7</sup> In *Kim, supra*, the dissent conceded that a 90 minute detention “. . . admittedly seems on the high end of  
 28 our precedent.” *Id.* 292 F.3d at 981.

1 attachments, which contained information implicating him in the sale of counterfeit Miro prints.  
2 Greenspan specifically pointed out that the warrant referred to the “Quatre Colors” that he had  
3 purchased from the gallery in December. Shortly after the actual questioning began the  
4 interrogation turned accusatory. Mr. Iannetti was accused of lying about when he last saw  
5 Bonfiglio, and he was told the “Quatre Colors” that Iannetti purchased from Bonfiglioli and sold  
6 to Greenspan was a low quality fake.

7 The Ninth Circuit has found that a defendant is in custody where an interrogator adopts  
8 an aggressive, coercive, and deceptive tone. *United States v. Bassagnani*, 560 F.3d 989, 994-995  
9 (9<sup>th</sup> Cir. 2009) In *United States v. Beraun-Panez*, 812 F.2d 578, 579 (9<sup>th</sup> Cir. 1987), the court  
10 found that the fact that officers demanded to know why Beraun-Panez was lying and said they  
11 knew the truth was found to mitigate in favor of a finding that the interrogation was custodial. In  
12 *United States v. Wauneka*, 770 F.2d 1434, 1439 (9<sup>th</sup> Cir. 1985), the court noted that “[t]he  
13 questioning progressed for over an hour and turned accusatory - Wauneka was told that he  
14 supplied information that only the perpetrator could know, that he matched the description of the  
15 rapist, and that he had better tell the truth.” In *United States v. Brobst, supra*, 558 F.3d 982,  
16 995 (9<sup>th</sup> Cir. 2009), when the defendant entered his residence he was told that the officers had a  
17 search warrant for the residence and provided him with a copy of it. He was then confronted with  
18 the fact that they had found child pornography in his bedroom and asked if it was his. *Id.* at 988-  
19 989. The court held that the fact that Brobst was immediately confronted with evidence of the  
20 child pornography weighed in favor of a finding Brobst was in custody. *Id.* at 995.

21 When Mr. Iannetti was first isolated in the viewing room he was told he was under  
22 investigation for mail and wire fraud. (Exhibit A at ¶ 8.) He was then asked to review the  
23 search warrant and attachments. Accusatory language in the attachments, the breadth of the items  
24 to be seized, and the statements made to Iannetti by Greenspan while he was reviewing the  
25 warrant, would certainly lead a reasonable person to believe that he was being confronted with  
26 evidence of his guilt.

27 Attachment B to the warrant described the “Items To Be Seized”. (Exhibit B, at pp.1-4.)  
28

1 The first sentence declared that all the items to be seized “*are evidence . . . of mail fraud . . .*  
2 *and/or of wire fraud . . .*”. (Exhibit B at p.1., emphasis added.)

3 Paragraph a. of Attachment B generally referred to the seizure of all pieces of art (prints,  
4 lithographs, etchings) by Miro. Paragraph a.1., specifically referred to the “Quatre Colors  
5 Aparien El Mon” series by Miro, one of which had been sold to Greenspan in December 2007.  
6 (Exhibit B at p.1) While Iannetti was reviewing this page Greenspan pointed to paragraph a.1.  
7 and said sarcastically “*you remember this piece don’t you?*” (Exhibit A at ¶ 9., emphasis added)  
8 Paragraph c. on this same page authorized the seizure of all business records that had anything to  
9 do with Iannetti and/or his gallery and a number of persons with Italian names. One of the  
10 persons listed was Elio Bonfiglioli, the person who sold Iannetti the “Quatre Colors” print  
11 purchased by Greenspan. Paragraph d. on the same page referred to all business records relating  
12 to the sale of Miro art works from January 1, 2001 to the present. The next page three pages  
13 referred to all inventory records relating to Miro for the same time period, all reference books  
14 related to Miro, and all computers and electronic records located at the gallery. (Exhibit B at pp.  
15 2-4)

16 Immediately after Mr. Iannetti finished his review of the warrant and attachments the  
17 interrogation began and quickly turned hostile and accusatory. Greenspan began by asking him  
18 some general questions about Elio Bonfiglioli. When asked when he had last met with Bonfiglio  
19 Iannetti answered that he last met with him in April of 2007. Greenspan then angrily and loudly  
20 accused Iannetti of lying. Iannetti was told him that he shouldn’t lie to the agents because they  
21 knew “everything”. Greenspan then told him that postal agents had followed Bonfiglioli when he  
22 was in San Francisco on November 8-9, 2007 and had observed them meeting at the gallery.  
23 Greenspan also indicated that they knew Iannetti had bought Miro prints from him at that time,  
24 including the “Quatre Colors”, and showed him a consignment invoice<sup>8</sup> dated November 10,  
25 2007 which reflected this fact. (Exhibit A at ¶ 10.)

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27  
28 <sup>8</sup> Exhibit B at p. 5.

1 Mr. Iannetti states that after he apologized for “misremembering” the date he last  
2 met with Bonfiglioli Greenspan became angrier and told him in a threatening manner that he was  
3 in serious trouble and that he had better tell the truth. Greenspan compared Iannetti’s situation  
4 to that of Barry Bonds in the Balco case. He told Iannetti that Bonds had also lied to federal  
5 agents and was now looking at federal jail time. He also told Iannetti that the “Quatre Colors  
6 Aparien El Mon” print he had sold to him in December had been examined by an art expert who  
7 determined that it was a low quality fake. Greenspan then indicated that if Iannetti continued to  
8 lie the prosecutor and the judge would not be very sympathetic towards him. (Exhibit A at ¶ 10.)

9 Not surprisingly, Esteban describes this portion of the interrogation in more antiseptic  
10 terms: “ we . . . confronted Iannetti about Bonfiglioli’s actual visit to San Francisco in  
11 November 2007. . . We told Iannetti that we knew Bonfiglioli was in San Francisco last year and  
12 that he and Bonfiglioli met with each other on November 9<sup>th</sup> and 10<sup>th</sup> in San Francisco in 2007,  
13 and that Iannetti received *those art prints* at that time.” (Exhibit E at p.2, emphasis added) As  
14 discussed above “those art prints” included the same “Quatre Colors Aparien” sold to Greenspan  
15 in December 2007. Esteban also indicates that “we advised Iannetti that it was in his best interest  
16 to be truthful with us and that we were not making any promises to him. . . . We advised  
17 Iannetti about our undercover purchase . . . of “Quatre Colors Aparien el Mon” on December 24.  
18 We told Iannetti that the art print was examined by an art expert and deemed to be a “low quality  
19 fake”. (Exhibit E at p. 2 )

20 The initial questioning of Mr. Iannetti has all the hallmarks of a well designed and  
21 thought out plan to extract a confession by the use classic police interrogation techniques. Mr.  
22 Iannetti was isolated in a room with two agents while other agents searched his gallery. He was  
23 told he was being investigated for mail and wire fraud. He was instructed to review a warrant  
24 which clearly tied him to the sale of counterfeit Miro prints. He was first asked general and  
25 innocuous questions about his relationship with Bonfiglioli. He was then asked when they had  
26 last met, a question obviously asked with the hope that he would give them a date different than  
27 November 9<sup>th</sup> or 10<sup>th</sup>. When he did so, he was accused of lying and confronted with the  
28

1 undercover surveillance of Bonfiglioli's visit to the gallery in November. He was also told that  
 2 the agents "knew everything" including the fact that the Miro he had sold to Greenspan was a  
 3 "low quality fake".

4 Mr. Iannetti was clearly confronted with evidence of his guilt during an interrogation that  
 5 quickly turned hostile and accusatory. According to *Beraun-Panez*, *Wauneka*, and *Brobst*,  
 6 *supra*, this factor weighs heavily in favor of a finding that Mr. Iannetti was in custody during his  
 7 interrogation.

8  
 9 **D. THE AGENTS EXERCISED COMPLETE CONTROL OVER  
 MR. IANNETTI'S ART GALLERY**

10 By exercising complete control over Mr. Iannetti and his place of business the agents  
 11 created a "police dominated atmosphere" which negated the fact that the interrogation took place  
 12 in familiar surroundings. When Mr. Iannetti arrived at the gallery the door was locked and it  
 13 was full of searching agents. Once he entered the gallery Greenspan ushered him into the viewing  
 14 room where he was isolated from any employees who may have been on the premises. When his  
 15 wife arrived at the gallery she was told to go away. She was eventually allowed to stay, however  
 16 she was kept isolated from her husband and was guarded by one of the agents. Finally, on the  
 17 two occasions Mr. Iannetti left the viewing room, Mr. Iannetti was accompanied and monitored  
 18 by one of the agents.

19 An interrogation conducted in familiar surroundings may be found to weigh against a  
 20 finding that the defendant was in custody<sup>9</sup>, however, the Ninth Circuit has also recognized that  
 21 consideration of the familiarity of the physical surroundings in the custodial interrogation context  
 22 may be neutralized where law enforcement officers take complete control over the environment  
 23 and create "a police-dominated atmosphere." *United States v. Brobst*, 558 F.3d 982 (9<sup>th</sup> Cir.  
 24 2009); *United States v. Craighead*, 539 F.3d 1073 (9<sup>th</sup> Cir 2008); *United States v. Kim*, 292 F.3d  
 25 969 (9<sup>th</sup> Cir. 2002); *United States v. Lee*, 699 F.2d 466 (9<sup>th</sup> Cir. 1982).

26 A number of factors are considered when determining whether the police have taken  
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28 <sup>9</sup> See *Beckwith v. United States*, 425 U.S. 341, 346-48 (1976)

“complete control” over the location where the interrogation was conducted: (1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made. *Craighead, supra*, 593 F.3d at 1084. An analysis of each of the first three factors under the circumstances of this case heavily mitigates in favor of finding that Mr. Iannetti’s interrogation took place in a “police dominated atmosphere”<sup>10</sup>:

#### **Number of Agents**

There were at least eight agents involved in the search of Mr. Iannetti’s gallery. (Exhibit D at ¶ 4.c.) When Mr. Iannetti entered the gallery it was crowded with law enforcement agents who were taking photographs or videos, going through his business records, and examining various works of art. (Exhibit A at ¶ 5) In *Craighead, supra*, the court found that “the presence of a large number of visibly armed law enforcement officers goes a long way towards making the suspect’s home a police-dominated atmosphere” and cited cases involving eight, seven, and five officers as examples of what it meant by a large number of officers. (Id. 539 F.3d at 1085.) The eight or more agents involved in the execution of the search warrant herein certainly contributed to making Iannetti’s gallery a police dominated atmosphere.

#### **Mr. Iannetti Was Restrained**

Although Mr. Iannetti was not physically restrained he reasonably felt he was subject to police domination and was not free to leave. As discussed above, Mr. Iannetti was commanded to leave his home and come to the gallery. When he got there the door was locked and he had to knock in order to gain entry. He was directed to follow Greenspan into the viewing room at which time the door was closed. During the entire time he was in the viewing room Esteban stood or sat between him and the only exit.

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<sup>10</sup> The fourth factor, which also mitigates in favor of a finding that Iannetti was in custody will be discussed at III. E., *infra*.

1 On the two occasions he was allowed to leave the viewing room he was accompanied and  
2 monitored by an agent. The first occurred when he asked to go to the bathroom. An agent  
3 walked him to the bathroom and stood outside the bathroom door. The agent appeared to be  
4 concerned about the amount of time he was taking and knocked on the door two or three times  
5 and asked him if he was all right. When Iannetti left the bathroom the agent walked him back to  
6 the viewing room. (Exhibit A at ¶ 12.) The second occurred when he was allowed to leave the  
7 viewing room to comfort his wife. He was accompanied by both Esteban and Greenspan on this  
8 occasion. (Exhibit A at ¶ 13.) At the conclusion of the interrogation Esteban accompanied  
9 Iannetti while he identified Miro prints he had purchased from Bonfiglioli. (Exhibit A at ¶ 14.)

10 In *Craighead*, the court pointed out that restraint may be accomplished without  
11 threatening or handcuffing a suspect:

12 Restraint amounting to custody may also be inferred where law enforcement  
13 officers permit the suspect to move around the house for brief periods but insist  
14 on escorting and monitoring him at all times. See *Mittel-Carey*, 493 F.3d at 40  
15 (finding an interrogation custodial where the suspect was escorted by agents on  
16 the three occasions that he was permitted to leave the interrogation space,  
17 including while he used the bathroom); *Griffin*, 922 F.2d at 1350-51 ("We realize  
18 that the likely effect on a suspect of being placed under guard during questioning,  
19 or told to remain in the sight of interrogating officials, is to associate these  
20 restraints with a formal arrest.") (539 F.3d at 1085-1086.)

21 Mr. Iannetti was clearly restrained with in the meaning of *Craighead*, *Mittel-Carey*, and  
22 *Griffin, supra*. He was escorted by agents to the room where the interrogation took place and the  
23 only way out was a closed door which was blocked by an agent. On each occasion that he left the  
24 interrogation room he was escorted and monitored by at least one agent.

25 **Mr. Iannetti Was Kept Isolated From His Wife And Employees**

26 Mr Iannetti was kept isolated from his wife when she entered the gallery to inquire about  
27 his whereabouts and well-being. When Mr. Iannetti arrived at the gallery he did not see any of  
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1 the employees he expected to be there. Apparently, all but one had been interviewed and  
2 excused before he arrived <sup>11</sup>. In *Craighead, supra*, the court noted that the Supreme Court, in  
3 *Miranda*, had “. . . highlighted isolation from the outside world as perhaps the crucial factor that  
4 would tend to lead a suspect to feel compelled to provide self-incriminating statements . Id. 539  
5 F.3d 1087. It then pointed out that: ““A frequently recurring example of police domination  
6 concerns the removal of the suspect from the presence of family, friends, or colleagues who  
7 might lend moral support during the questioning and deter a suspect from making inculpatory  
8 statements . . .” Id. 539 F.3d at 1987 citing *Griffin, supra*, 922 F.2d at 1352

9 In the instant case the agents kept Mr. Iannetti isolated from his wife when she came to  
10 the gallery to see him. Elena Iannetti arrived at the gallery around 3:00 p.m. and found a locked  
11 door and the gallery full of people she did not recognize. When an agent came to the door she  
12 identified herself as Iannetti’s wife and asked to see him. The agent told her that the gallery was  
13 closed and shut the door in her face. She remained at the front door crying. After an  
14 unsuccessful attempt to obtain help from a lawyer she decided to unlock the door and go in  
15 anyway. When she entered an agent rushed up to her and pushed her back towards the front door  
16 to keep her from going to the back of the gallery. She became hysterical and began screaming  
17 that she wasn’t going to leave until she saw her husband. At this point the agents walked out of  
18 the viewing room with Mr. Iannetti and he attempted to calm her down. When she still refused to  
19 leave she was allowed to sit in the gallery with agent by her side. Significantly, Mr. Iannetti’s  
20 was returned to the viewing room and his interrogation continued for an hour or more. (Exhibit C  
21 at ¶ 7-10.)

22 In *Kim, supra*, the interrogation took place at the defendant’s place of business. When  
23 Mrs. Kim arrived at her store with her husband the police were executing a search warrant. They  
24 allowed her into the store, but locked the door behind her leaving her husband outside. Once  
25 inside the store she was kept isolated from her son who had been in the store at the time the  
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27 <sup>11</sup> It appears that one employee, Margaret Aitken, was still on the premises being interviewed by the agents,  
28 however, Mr. Iannetti did not see her. (Exhibit D at ¶ 4.d.)

1 police entered. The court found that “isolating the defendant from the outside world - *here from*  
2 *her husband who had tried to join her in the shop - largely neutralizes the familiarity of the*  
3 *location as a factor undermining coercion.*” Id. 292 F.3d at 977.( Emphasis added.)

4 In *Craighead, supra*, the defendant, who was in the armed forces, was present at his home  
5 during the execution of a search warrant by eight law enforcement officers. He was escorted to a  
6 back storage room of his house and the door was closed behind him. A non-law enforcement  
7 serviceman was brought along by the searching agents to provide emotional support for  
8 Craighead, however, he was not allowed into the back room and it appeared that Craighead never  
9 knew he was there. Nevertheless the court found the refusal to let this other person into the  
10 interrogation room was significant: “The fact that Craighead did not event realize that Sergeant  
11 Ramsey was there to provide emotional support only underscores this point; he migh have  
12 discovered Sergeant Ramsey was there to offer emotional support if SA Andrews had in fact  
13 permitted Sergeant Ramsey to accompany Craighead into the storage room and provide such  
14 support.” Id. 539 F.3d at 1087.

15 The circumstances of Mr. Iannetti’s interrogation include elements of isolation found in  
16 both *Craighead* and *Kim*. When Mr. Iannetti arrived at the gallery at least eight agents were  
17 searching the premises. He was escorted to a room in the back of the gallery and the door was  
18 shut. He did not see any of the employees who were supposed to be working in the gallery that  
19 day and he did not learn of the presence of the one employee who was present who could have  
20 provided him with emotional support. Later, when his wife arrived at the gallery for purpose of  
21 providing such support she was denied entry. When she essentially forced her way into the  
22 gallery Iannetti was allowed to comfort her for a few moments, but she was allowed to stay, only  
23 on the condition that she sit in the main body of the gallery while under guard and isolated from  
24 her husband. Under these circumstances the familiarity of the physical surroundings in which Mr.  
25 Iannetti’s interrogation took place was clearly neutralized.

**E. A REASONABLE PERSON WOULD NOT HAVE FELT  
FREE TO LEAVE THE GALLERY**

Mr. Iannetti reasonably felt that he was not free to leave the gallery despite being told by the agents at the beginning of the interrogation that he could leave and that they were not there to shut down his business or arrest him. (Exhibit A at ¶ 8.)

In *Craighead, supra*, the court pointed out that “[t]he mere recitation of the statement that the suspect is free to leave or terminate the interview . . . does not render an interrogation non-custodial *per se*. We must consider the delivery of these statements within the context of the scene as a whole . . . The *Miranda* test for custody does not ask whether the suspect was *told* that he was free to leave; the test asks whether ‘a reasonable person would have *felt* he or she was not at liberty to terminate the interrogation and leave.’ (emphasis added in original).” *Craighead, supra*, at 1088, quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

An examination of the “context” in which Greenspan’s statement to Iannetti that he was free to leave the room took place must consider that the statement was made: (1) *after* Iannetti had been called at home and ordered to come to the gallery with proof of identification; (2) *after* Iannetti was told to follow Greenspan through a crowd of searching agents and ushered into the viewing room ; (3) *after* the door was closed and Esteban took a position which blocked the only way out of that room; and (4) *after* Iannetti was told that he was under investigation for mail and wire fraud and then asked if he would answer a few questions. Would a reasonable person in Mr. Iannetti’s position have felt free to leave the room at that point? Clearly, he would not.

Mr. Iannetti was then asked to review the search warrant. While he was reviewing the warrant Greenspan pointed to the paragraph which indicated that one of the items to be seized as “evidence” of mail and wire fraud was the print he had bought from Bonfiglioli and sold to Greenspan. He was then asked some general questions about his relationship with Bonfiglioli. When he told Greenspan he had not seen Bonfiglioli since April of 2007 he was accused of lying, told about the surveillance of his gallery in November and the fact that he had been seen meeting

1 with Bonfiglioli. When he tried to explain that he mis-remembered he was told that the agents  
2 “knew everything”, including the fact that the “Quatre Colors” sold to Greenspan was a low  
3 quality fake. His situation was compared to that of Barry Bonds, a thinly veiled threat that if he  
4 did not cooperate he would be facing federal jail time. Would a reasonable person in Mr.  
5 Iannetti’s position have felt free to leave the room at that point? Clearly, he would not.

6 For the sake of argument only, even if the court were to somehow consider the beginning  
7 of Mr. Iannetti’s interrogation “voluntary”, the fact that it quickly became confrontational and  
8 accusatory turned it into a custodial interrogation. *United States v. Lee*, 699 F.2d 466 (9<sup>th</sup> Cir.  
9 1982) ;*United States v. Beraun-Panez*, 812 F.2d 578, 580 (9<sup>th</sup> Cir.), *modified by* 830 F.2d 127  
10 (9<sup>th</sup> Cir. 1987); *Kim, supra*, 292 F.3d at 973 The Ninth Circuit has held that advising a person  
11 at the beginning of an interview that he was free to leave is negated when the interview quickly  
12 turns accusatory.

13 In *United States v. Lee, supra*, the defendant was asked if he would agree to be  
14 interviewed in an FBI vehicle which was parked in front of his house. When Lee entered the  
15 vehicle with two agents he was told that he was free to leave the car or terminate the interview at  
16 anytime. At the beginning of the interview the police allowed him “to repeat his exculpatory  
17 story and then confronted him with evidence of his guilt and told him it was time to tell the truth  
18 ..” *Id.* 699 F.2d at 467. The court held that in “such circumstances a reasonable innocent person  
19 would not feel free to leave”. *Id.* at 468.

20 Mr. Iannetti’s interrogation is strikingly similar to the interrogation in *Lee*. Mr. Iannetti  
21 was asked a few general questions about his relationship with Bonfiglioli and then he was angrily  
22 accused of lying to the agents about when they last met. He was confronted with the clandestine  
23 surveillance of Bonfiglioli and an invoice which proved that he bought the “Quatre Colors”  
24 during that meeting. He was advised that an expert had examined the print he had sold to  
25 Greenspan and said it was a “low quality” fake. The agents told him they “knew everything”. In  
26 other words they knew he was guilty. Any reasonable person would not have felt free to leave  
27 the room at that point. Moreover, as the interrogation progressed the fact he was only allowed to  
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1 use the bathroom with a police escort and the fact that he was only allowed to see his wife briefly  
2 when she forced her way into the gallery could have only reinforced the reasonable conclusion  
3 that he was not free to leave the room..  
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5 **F. THE TOTALITY OF THE CIRCUMSTANCES ESTABLISH**  
6 **THAT MR. IANNETTI WAS IN CUSTODY AT THE TIME**  
7 **HE MADE HIS STATEMENTS TO THE POSTAL AGENTS**

8 The totality of the circumstances in this case overwhelmingly support a finding that Mr.  
9 Iannetti was in police custody at the time he made his statements to Greenspan and Esteban. He  
10 did not voluntarily come to the gallery. He was commanded to do so by inspector Greenspan.  
11 When he arrived at the gallery it was completely under the control of at least eight law  
12 enforcement agents and he had to knock to gain entry. His employees were nowhere to be seen.  
13 He was ordered into the viewing room and the door was closed. Esteban blocked the only exit  
14 from the room. He was told that although he was under investigation for mail and wire fraud the  
15 agents were not intending to arrest him at that time or shut down his business. Shortly after the  
16 questioning began he was accused of lying and confronted with evidence of his guilt. As the  
17 interrogation progressed he realized that he could not leave the room without a law enforcement  
18 escort. When his wife arrived at the gallery she was initially refused entry. When she did enter  
19 she was kept isolated from him. No reasonable person would have felt that he was free to leave  
20 the gallery under these circumstances.

21 Each of the factors analyzed above make it clear that Mr. Iannetti's interrogation was  
22 custodial and *Miranda* warnings were required. Mr. Iannetti's statements should be suppressed.

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**CONCLUSION**

For the reasons set forth above Mr. Iannetti respectfully requests that the Court grant his motion, and accord other relief as it deems just.

Dated: March 19, 2010

Respectfully submitted,

/s/  
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